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XINGKE ELECTRONICS (DONGGUAN) CO., LTD.,
formerly known as SINCO ELECTRONICS (DONGGUAN)
CO., LTD.; LIEW YEW SOON aka MARK LIEW;
NG CHER YONG aka CY NG; and MUI LIANG TJOA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SINCO TECHNOLOGIES PTE LTD.,

CASE NO. 3:17-cv-05517-EMC

Plaintiff,

vs.

SINCO ELECTRONICS (DONGGUAN) CO., LTD.; XINGKE ELECTRONICS (DONGGUAN) CO., LTD.; XINGKE ELECTRONICS TECHNOLOGY CO., LTD.; SINCOO ELECTRONICS TECHNOLOGY CO., LTD.; MUI LIANG TJOA (an individual); NG CHER YONG aka CY NG (an individual); and LIEW YEW SOON aka MARK LIEW (an individual).

Defendants.

**DEFENDANTS' MOTION FOR
ADMINISTRATIVE RELIEF REGARDING
PLAINTIFF'S PREMATURE DAUBERT
MOTION IN LIMINE**

Court: The Honorable Edward M. Chen
Courtroom: 5, 17th Floor

1
2 AND RELATED COUNTER-CLAIMS.
3

4 **INTRODUCTION**

5 Pursuant to Civil Local Rule 7-11, Defendants move for administrative relief and ask the Court
6 to strike or deny Plaintiff's *Daubert* motion to exclude the testimony of Henry Kahrs and Adrian Fleissig
7 at trial. Plaintiff's motion in limine is served months premature and has been filed in violation of the
8 Court's Third Amended Case Management Pretrial Order for Jury Trial ("Third Amended CMO").

9 Plaintiff styled its *Daubert* motion as a "motion to strike" – but, in fact, it is a motion a limine
10 seeking to exclude Defendants' expert witnesses from testifying at trial. The Third Amended CMO
11 governs the submission of motions in limine, and specifically provides that such motionS are to be served,
12 not filed, by September 3, 2021, and any oppositions thereto are not required to be served until September
13 10, 2021, which is twenty-five (25) days prior to the pretrial conference. Plaintiff, by filing its *Daubert*
14 motion as a motion to strike, is attempting – in violation of the Court's orders – to force Defendants to
15 prematurely file their opposition to a motion in limine five months before it is due, and to improperly
16 allow Plaintiff to exceed the page limit and submit a reply brief.

17 Defendants asked Plaintiff to withdraw its motion, but Plaintiff did not respond. Because
18 Defendants' opposition to the *Daubert* motion is currently due April 9, 2021, Defendants seek immediate
19 relief through this administrative motion, and request that the Court enter an order striking or denying
20 Plaintiff's *Daubert* motion, without prejudice to Plaintiff submitting motions in limine in accordance
21 with the procedures set forth in the Third Amended CMO.

22 **RELEVANT FACTS**

23 On February 1, 2021, the Court entered the Third Amended CMO (which is the operative case
24 management order). The Third Amended CMO sets forth the procedures by which the parties are
25 required to follow in submitting any motions in limine:

26 The following procedure should be used with respect to motions in limine. At least thirty-
27 two (32) days before the pretrial conference, serve – but do not file – the moving papers.
At least twenty-five (25) days before the conference, serve – but do file – the oppositions.
When the oppositions are received, the moving party should collate the motion and

1 opposition together, back to back, then filed the paired sets (each under separate cover) at
 2 least twenty-one (21) days prior to the conference.

3 Each motion in limine should address a single topic and contain no more than seven pages
 4 of briefing per side. Reply briefs are not permitted. Usually, each party or side should
 not need to file more than five motions in limine. Each party shall number its motions in
 limine in order of importance, the first being the most important.

5 (Third Amended CMO at 6.)

6 The final pretrial conference is scheduled for October 5, 2021. (*Id.* at 1.) Thus, **oppositions to**
 7 **any motions in limine do not need to be served until September 10, 2021** (and then filed by September
 8 14, 2021). The Third Amended CMO further mandates that any objections to live expert witness
 9 testimony at trial be raised through a motion in limine:

10 *The following information should be provided as an appendix to the joint pretrial*
 11 *conference statement.* For each party, a list of all witnesses likely to be called at trial,
 12 including those appearing by deposition. For each witness, there should be a short
 13 statement of the substance of his or her testimony and an estimate regarding the length of
 14 testimony (including direct and cross-examination). If the witness is an expert witness,
 the short statement should clearly state the expert's theories and conclusions and the bases
 therefor; in addition, the expert's curriculum vitae and report (if any) should be attached.
If there are objections to a live witness's testimony, whether in whole or in part, that
objection should be raised through a motion in limine....

15 (*Id.* at 4 (emphasis added).)

16 On March 26, 2021, Plaintiff filed its *Daubert* motion, accompanied by a 22-page memorandum
 17 of points and authorities. Plaintiff called the motion a *Daubert* "motion to strike," yet the motion
 18 specifically requests that the Court *exclude* Defendants' damages experts from testifying at trial. (*See*
 19 DKT. 384, 384-1.)¹

20 On April 2, 2021, Defendants asked Plaintiff to withdraw its *Daubert* motion due to its failure to
 21 abide by the Court's procedures with respect to motions in limine. As of the time of the filing of this
 22 Administrative Motion, Plaintiff has not responded to this request. (*See* Declaration of Kathleen Alparce
 23 attached hereto, ¶ 6.)

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 28 ¹ If Plaintiff contends that seven pages is not enough for *Daubert* motions, it can seek additional pages at the appropriate
 time.

1 Defendants' opposition to Plaintiff's *Daubert* motion must currently be filed by April 9, 2021,
 2 and oral argument is set for May 6, 2021.²

3 **ARGUMENT**

4 The Court should strike Plaintiff's *Daubert* motion because it was filed in violation of the Court
 5 orders. Under the Third Amended CMO, the parties may serve (but not file) motions in limine at least
 6 thirty-two (32) days before the pretrial conference. (*See* DKT. 380 at 6.) Oppositions to motions in
 7 limine are required to be served (but not filed) at least twenty-five (25) days before the pretrial conference,
 8 and then the moving party is required to collate each motion and opposition and file the paired sets at
 9 least twenty-one days prior to the conference. (*Id.* (emphasis added).) Neither side may submit a motion
 10 or opposition that exceeds seven pages, and no reply briefs are allowed. (*Id.*) The Third Amended CMO
 11 further provides that any objections to a live witness's testimony, whether in whole or in part, must be
 12 raised through a motion in limine. (*Id.* at 4.) The Third Amended CMO does contain any provisions
 13 specific to expert motions, only the provisions above for motions in limine.

14 In an effort to get around these orders and force Defendants to prematurely file an opposition, as
 15 well as to give Plaintiff the opportunity to file a reply brief and exceed the page limit, Plaintiff improperly
 16 filed its *Daubert* motion as a "motion to strike" (with a 22-page memorandum) – instead of following the
 17 Court's motion in limine procedure orders – thereby triggering a deadline of April 9, 2021 for Defendants
 18 to oppose. Plaintiff's *Daubert* Motion is plainly a motion in limine – i.e., it seeks to exclude expert
 19 testimony at trial. (*See* DKT. 384, 384-1.) As such, Plaintiff must follow the procedures set forth in the
 20 Third Amended CMO governing motions in limine.

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28 ² Given the response date of April 9, 2021, Defendants have concurrently filed herewith a separate motion to shorten time to consider this Administrative Motion.

CONCLUSION

For the foregoing reasons, the Court should strike Plaintiff's *Daubert* motion or deny it without prejudice to Plaintiff submitting motions in limine in accordance with the procedures set forth in the Third Amended CMO.

Respectfully submitted,

Dated: April 6, 2021

WHGC, P.L.C.

By: /s/ Kathleen E. Alparce

Jeffrey C.P. Wang

Michael G. York

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Jessica A. Crabbe

Attorneys for Defendants and Cross-Complainants
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NG CHER YONG AKA CY NG, LIEW YEW SOON
AKA MARK LIEW, AND MUI LIANG TJOA AKA
ML TJOA

CERTIFICATE OF SERVICE

The undersigned hereby certify that a true and correct copy of Defendants' Motion for Administrative Relief Regarding Plaintiff's Premature Daubert Motion in Limine, filed through the ECF System will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated on non-registered participants on **April 6, 2021**.

Executed on **April 6, 2021**, at Newport Beach, California.

/s/ *Martha Valenzuela*
MARTHA VALENZUELA